

MINUTES
Montana Fish, Wildlife & Parks Commission Meeting
1420 East Sixth Avenue
Helena, MT

June 18-19, 2002

Commission Members Present: Dan Walker, Chairman; Tim Mulligan, Vice-Chairman; Darlyne Dascher; John Lane and Mike Murphy.

Fish, Wildlife & Parks Staff: Jeff Hagener, Director; and other Department personnel.

Guests: Mac Minard; Kelly Gorin, Office of Budget and Program Planning; Curtis Spindler, Montana B.A.S.S.; Robin Cunningham, Fishing Outfitters and Anglers of Montana (FOAM); Bruce Bugbey, APLE Co.; Loren Flynn, Travelers' Rest Preservation and Heritage Association (TRPHA); Virgil Binkley, Broadwater Rod & Gun Club; Nelson West; Sandy Maki, Polson Chamber of Commerce; Bill Myers, Pointer Scenic Cruises; Mike Hutchin, Lake County Commission; Sharon Procopio, President, Polson Chamber of Commerce; Mary Ellen Schnur, Montana Outfitters and Guides Assoc. (MOGA); Jean Johnson, MOGA; Dick Burnett, Montana Trappers Assoc. (MTA); Sandy Saltee, Montana State Houndsmen Assoc. (MSHA); Paul and Melissa Tuemmler, MTA; Jim Lechleitner, MSHA; Cliff Cox; Marlowe Raines; Mable Deane, MSHA; Chuck Barabey, PPSA; Arnold Erhardt; Leslie O'Neil; Robert Sheppard, MTA; Wayne Moore, MTA; Ed Hebbe, III, MTA; Bill Holdorf, Skyline Sportsmen's Assoc.; Elaine Mann, Broadwater County Commission; Larry Copenhagen, Montana Wildlife Foundation; Steve Pitcher, Montana Stockgrowers Assoc.

Present but did not sign in: John Hughes

Topics of Discussion:

- 1. Opening - Pledge of Allegiance**
- 2. Approval of Commission Minutes, April 18, 2002 meeting**
- 3. Approval of Commission Minutes, May 9, 2002 meeting**
- 4. Approval of Commission Expenses through May 31, 2002**
- 5. 2004-2005 Biennial Budget**
- 6. Private Land Fishing Access Projects Approval - Final**
- 7. Cameron Bridge FAS Easement Conversion, Region 3 - Final**
- 8. Black's Ford FAS-DeHaan Lease Renewal, Region 3 - Final**
- 9. Delegation of Authority to Close Waters to Fishing - Final**
- 10. Fishing Contest Regulation Waiver - Tentative**
- 11. Travelers' Rest Acquisition and Donation, Region 2 - Final**
- 12. Wild Horse Island Commercial Use Appeal, Region 1**
- 13. Deer, Elk & Antelope Quotas - Tentative**
- 14. Furbearer Seasons & Quotas - Tentative**
- 15. Moose, Sheep & Goat Quotas - Final**
- 16. Mountain Lion Season & Quotas - Final**

17. Blackleaf WMA Lease, Region 4 - Final
18. Elk Island WMA Lease, Region 7 - Final
19. Prairie Dog Translocation, CMR Refuge - Final
20. Moose and Sheep Auction Rules - Final
21. Early Season Migratory Bird Regulations - Tentative
22. Fall Turkey Quotas - Tentative
23. Bice Conservation Easement Water Issue, Region 7 - Final
24. Proposed ARM Rule on Bonus Points

June 18, 2002

1. **Opening - Pledge of Allegiance.** Chairman Dan Walker called the meeting to order at 8:05 a.m. and led the Pledge of Allegiance.

2. **Approval of Commission Minutes of April 18, 2002 meeting.**

***ACTION:** Commissioner Darlyne Dascher moved approval of the minutes of the April 18, 2002 meeting as amended. Commissioner John Lane seconded; motion carried.*

3. **Approval of Commission Minutes of May 9, 2002 meeting.**

***ACTION:** Dascher moved approval of the minutes of the May 9, 2002 meeting after two changes are made that were presented to Commission Secretary by Commissioner Tim Mulligan; Mulligan seconded; motion carried.*

4. **Approval of Commission Expenses through May 31, 2002.**

***ACTION:** Dascher moved approval of expenses as presented; Commissioner Mike Murphy seconded and motion passed.*

5. 2004-2005 Biennial Budget. Director Jeff Hagener: At the January Commission meeting the Commission was briefed on the projected financial status of the agency for the upcoming biennium and discussed agency priorities. Today will be an update on the budget that was prepared and submitted to the Governor's Office based on the Commission approved priorities and financial resources projected to be available. The budget package is fully funded and within the projections presented in January except for items that are identified as being contingent upon a resident fee increase.

Under Montana statutes, the governor must reduce expenditures from the general fund by up to 10% if the fund balances at the end of the first year of the biennium fall below a certain point. Projections of the Office of Budget and Program Planning indicate such reductions may be necessary in FY03. Accordingly, FWP was asked to submit a list of potential budget cuts for review by OBPP. The OBPP examined reductions offered by all departments, and recommended to the governor that she reduce general fund spending by FWP by 9.6%.

Also under Montana statutes, the Commission must review and approve the FWP budget submission for the upcoming biennium. Due to the timing of Commission meetings and budget deadlines set by the OBPP, FWP complies with the requirement for Commission approval by reviewing the agency's fiscal environment and general budget priorities with the Commission in January, and specific items in June of even numbered years.

Budgets are separated into two categories going to the legislature. One is the operations budget, HB 2, and the second portion is capital budget items, HB 5. Some of the numbers seen there are federal monies not approved on a long-term basis; have to go back each year for approval. One category is dependent upon a new fee increase. If that is not accepted, those funds will either be cut substantially or they will not be available. So talking about three categories: existing but have to get approval again, expanding programs with existing funding, and programs contingent on a fee increase.

Sue Daly, Budget Development and Analysis Bureau Chief, summarized general fund reductions in the FY 03 budget adopted by the Governor; Division Administrators summarized operating budget proposals for each division; and **Jeff Hagener** summarized the capital budget and 5% reduction as outlined in the FWP Commission Budget Update of June 18-19, 2002.

Chris Smith, Chief of Staff, summarized the proposed legislation as listed in the FWP Commission Budget Update of June 18-19, 2002. The Commission asked that the department consider a two-tiered license agent commission system, limiting legislation on operation of OHVs and snowmachines under the influence to public land, and add the following additional legislative requests to the agency list: elimination of the requirement that lion hunters wear orange, shooting beaver, a waiting period for highly sought-after elk permits, a placeholder for recommendations from the River Recreation Advisory Council, and reauthorize the Commission to limit nonresident upland bird licenses.

ACTION: *Commissioner Mulligan moved to approve the submission of the operating and capital budgets for FWP in the FY 2004/2005 biennium, as prepared by the department. Commissioner Dascher seconded the motion. Motion passed.*

6. Private Land Fishing Access Projects Approval - Final. **Chris Hunter**, Fisheries Division Administrator, said the regional fish managers have negotiated four agreements with landowners. The legislation included \$50,000 per year for two years when the Fishing Access Site Enhancement Program was passed to provide incentives to landowners who provide access to or across private land for public fishing. The first two, which are in Region 3, are the Gien Ranch on the lower Beaverhead River, and Gheny Pond outside of Twin Bridges. **Walker** asked if \$5,000 of the \$6,000 for Gheny Pond was for excavation. **Hunter** said it was. The other two are Angler's Roost, a privately owned campground and fly shop on the mainstem of the Bitterroot River in Region 2, and Haughian Bass Pond in Region 7 and north of Miles City. The total for the four projects is just shy of \$35,000.

ACTION: *Commissioner Mulligan moved approval of the Private Land Fishing Access projects as presented by the department; Commissioner Lane seconded. Motion passed.*

7. Cameron Bridge FAS Easement Conversion, Region 3 - Final. **Hunter** indicated where the Cameron Bridge FAS is on a map. He explained that a private easement to cross two portions (120 feet) of this fishing access site was granted to an adjacent landowner to facilitate sale of private property to the north of it in December of 1989. The private property was subsequently sold to property developer Michael Delaney. In 2002 Mr. Delaney requested FWP convert the private easements into a public road easement. He is asking to abandon two private easements and put them into one public easement more in line with the road entering his subdivision, so this gets rid of those two private easements and creates a public access easement to the FAS. **Hagener** asked who holds the private easements now. **Mulligan** said the developer Delaney does. Asked if they received any public comment on this. **Hunter** said they had not.

***ACTION:** Mulligan moved approval of conversion of an existing private easement held by Michael Delaney that allows two private roadways into a public easement that allows for a single roadway, permit relocation of the new easement approximately 50 feet to the east of existing easement, abandon private easement that allows for two roadways, reclaim all old roadbeds associated with the private easement, and insert suggested language in new easement regarding public use and flooding. John Lane seconded the motion. Motion passed.*

8. Black's Ford FAS-DeHaan Lease Renewal, Region 3 - Final. **Hunter** said the department has leased this site on the Madison River from Donald DeHaan since March 1981 in a series of five-year leases. The department wants to renew the lease for another five-years, to expire May 1, 2006. No EA is necessary as this is a lease renewal, and the only change is that the lease fee has increased to \$1,000 per year.

***ACTION:** Commissioner Mulligan moved to approve renewal of the Black's Ford FAS-DeHaan lease agreement for a five-year term that expires May 1, 2006, at \$1,000 per year. Commissioner Murphy seconded the motion. Walker noted that the actual lease agreement stipulates \$500 per year for years 2002 and 2003, and \$1,000 per year for the years 2004 through 2006. He said the motion should state those terms of the lease agreement. With that stipulation, the motion passed.*

9. Delegation of Authority to Close Waters to Fishing - Final. **Hunter** said, as discussed at the May Commission meeting, during periods of drought it is sometimes necessary to close waters to fishing per FWP drought policy. For the past two years, the Commission has delegated the authority to close waters to fishing to the FWP Director and the Commissioner in whose district the body of water is located. This helps expedite the closure process. **Murphy** asked if this was specific to drought, and **Hunter** said it was drought-related.

***ACTION:** Commissioner John Lane moved to approve the delegation of authority to close waters to fishing during drought in 2002 to the Director and the Commissioner in whose district the water is located. Commissioner Dascher seconded the motion. Motion passed.*

10. Fishing Contest Regulation Waiver - Tentative. **Hunter** said the Montana B.A.S.S. Federation wants to host the B.A.S.S. Western Divisional Tournament at Noxon Rapids

Reservoir in mid to late May, 2003. To host the tournament at that time, the club must obtain a temporary waiver of the one fish daily regulation for the reservoir. The waiver would be required for all three days of the fishing contest. However, the one-fish limit would remain in place for any pre-tournament fishing. In addition, the department would have to waive the time frame for submitting fishing contest applications so the contest can be approved in time to meet the requirements of the B.A.S.S. Federation for advertising, etc. A final decision must be made by early August if the Montana chapter is to win the opportunity to host this tournament. Bass spawning at Noxon occurs later so they don't perceive this as a problem. **Dascher** asked if they needed to address this in the fishing regulations. **Hunter** said they probably should. There are about 10 of these lakes in the western district. They're not sure if Noxon is the only one with later spawning. If they are all in this situation, they could change them all. **Dascher** asked about the one-fish limit on the pre-tournament fishing. Does that mean catch and release, but only keep one? **Curtis Spindler**, Montana B.A.S.S. Federation, said during the pre-tournament period, it's mostly getting a game plan and finding fish. No one normally keeps fish during the pre-tournament.

ACTION: Commissioner Dascher moved to approve the granting of a waiver from the one fish per day regulation on Noxon Rapids Reservoir for a three-day period to be specified in the contest application submitted to the Fisheries Division. Commissioner Lane seconded the motion; motion passed.

11. Travelers' Rest Acquisition and Donation, Region 2 - Final. **Doug Monger**, Parks Division Administrator, said that in March of 2001 FWP received through donation a 15-acre site believed to be Travelers' Rest, a key Lewis and Clark and native American historical and archaeological site. FWP would acquire fee title to 10 acres known as the Tract 2A-1 using Land and Water Conservation funds. The landowner of Tract 3A-1 proposes to donate a conservation easement to FWP protecting approximately 10 acres of this tract from future development and providing recreational opportunities to the public. In addition, owners of Lot 2 of the Van Ostrand Subdivision are interested in donating those 4.5 acres to FWP as soon as the National Park Service puts national historic designation on Travelers' Rest State Park, which the department sees as eminent.

Travelers' Rest Preservation and Heritage Association would manage this parcel at no additional cost to the department. The proposal today is to acquire the 10-acre trail easement as well as the 4.5-acre parcel. The price is \$230,000 from the federal Land and Water Conservation fund. An immediate expense is fencing for about 200 yards along a property line.

Loren Flynn, Executive Director, Travelers' Rest Preservation and Heritage Association, said three years ago the community of Lolo anticipated what was then in private ownership would become public land. It was determined that this property would likely become the entrance to this state park. **Walker** asked when the National Park Service would give designation of this site as a historic site. **Flynn** said later this year.

Bruce Bugbey said he comes before the Commission representing his client, The Conservation Fund, and they are assisting with the acquisition of these parcels in support of the Travelers' Rest

site. Lewis and Clark camped here both coming and going, and selected this site from guidance given them by the Salish and Nez Pierce tribes.

ACTION: Commissioner Murphy moved that the department acquire the 10-acre Tract 2A-1, accept the donation of a conservation easement on Tract 3A-1 and accept the donation of Lot 2 of the Van Ostrand subdivision in fee, all to expand the existing Travelers' Rest State Park. Commissioner Dascher seconded the motion. Motion passed.

12. Wild Horse Island Commercial Use Appeal, Region 1. Bill Myers of Pointer Scenic Cruises, Bigfork, appealed Region 1 Supervisor Dan Vincent's decision to disallow shuttle services to Wild Horse Island (WHI).

Marty Watkins, Region 1 Parks Manager, gave a slide presentation of the history, background and public comment relative to the WHI Management Plan.

Mike Hutchin, Lake Co. Commissioner, asked the FWP Commission to amend the decision and allow shuttle service. Commissioner Hutchin feels many people do not have the means to access the island in any other manner and emphasizes he would like to see the Commission find a way to allow the shuttle service to continue for this year. He and his constituents don't believe the service provided has exceeded the potential use of WHI, and said that he felt people offering the services could provide a database to be used for implementation of future management plans. Commissioner Hutchin reiterated that he felt shuttle service should be separated from other business opportunities such as commercial use that would be allowed there.

Sharon Procopio, President of the Polson Chamber of Commerce, stated that she too felt people should be provided an opportunity to access the island through some sort of shuttle service. She indicated that the Chamber of Commerce is interested in people accessing the island, but they are not interested in commercial activities on the island. She said commercial transportation is the only way elderly and disabled persons can access the island. She said it is a unique state park and should be available to everyone, not just those who have a boat.

Bill Myers, Pointer Scenic Cruises, Bigfork, handed out the park rule that was recently approved by the Commission. He said that rental boats are excluded from the new rule and this amounts to selective enforcement against him. Mr. Myers said that he's not asking for "commercial use" of the island as he is not guiding and does not propose to do so. He is asking strictly for the right to provide safe public transportation to the island. Mr. Myers indicated that providing boat service to WHI constitutes 15% of his total business. He indicated he's tried to resolve this problem for eight years. Mr. Myers claims to keep his boats on the water and he does not beach them. He said the issue of equality is essential and everyone has a right to get there; it should not be selective.

Walker said the commission has received material and letters from the public. He said the Lake County Attorney's office differs with FWP's legal opinion as to our ability to control shuttle services. Therefore, he feels that we should deal with this in a pragmatic way. We are in the middle of the summer season and perhaps the status quo would be the best resolution for this

summer. Commissioner Walker asked the Legal Division how to continue to allow shuttle service this year and yet start a rule making process prior to the expiration of the 2004 plan? **Becky Engstrom**, FWP Legal Counsel, indicated that the department could allow the status quo to continue, even though an ARM rule prohibits commercial use. She said the County Attorney doesn't necessarily disagree with the department, but believes there needs to be more clarification in the ARM rule language. She indicated that the department could use prosecutorial discretion and choose not to prosecute for this year. **Walker** asked about other commercial entities that may want to become involved and how we deal with prior use? **Engstrom** said those are good policy questions that need to be addressed and reiterated that the department does not have to issue citations but can use prosecutorial discretion. She indicated that should the department choose not to issue a citation, this would not set a precedent.

Dascher said she doesn't like to see a state park without legal access, but she doesn't want to reward Mr. Myers for doing something illegal either. She said if the Commission makes it legal, others must have the option to take people there as well. She indicated she wants to start a process to address it later this fall one way or the other. **Walker** asked if this commission made a motion to uphold the Myers appeal, would that negate the December 2001 biennial rule? **Engstrom** indicated if the Commission made a motion not to prosecute Mr. Myers commercial activity, then they wouldn't have to amend the biennial fee rule. If they were to make a motion to change the commercial use definition, it would have to go through a process to change the biennial fee rule. **Mulligan** said he's uncomfortable with the Commission making a motion to prosecute or not prosecute. He feels the issue is complex and it would be a mistake to take action today without considerably more thought and would like to see the issue revisited at some time in the future. He added it is a reasonable thing to do to allow people to access the park who don't own boats.

Doug Monger asked for clarification with respect to what was being appealed. He's assuming it is not the fee rule, but rather the Management Plan. Given this the Commission could accept the appeal and override the decision made by the supervisor, or reject the appeal and not issue permission to any commercial operator until such time as the department comes back with a process to allow commercial activity. That would help move toward a new rule making process yet not allow commercial activities as the department defines them. **Engstrom** said in the interim the department could exercise prosecutorial discretion with regard to shuttle service but not necessarily apply it to any other commercial use. **Murphy** asked how it would apply to others that would want to provide the same service. **Engstrom** said it would have to apply to others as well and the department could opt not to issue citations. **Walker** said that this is an important decision distinction and hopes a motion can be drafted to allow the status quo to be maintained for this season, provide for more public comment and a precise settlement of this situation in the future. He wants to provide others wanting to provide similar service to have an equal opportunity.

Hagener said the department has never prosecuted anyone for this activity. The critical point is that the department does not want to establish historical use should the department choose to restrict the number of people using the island in the future. The department first needs to establish how much commercial use is appropriate. **Mulligan** said if we go into an allocation

process the historical use issue will come up and it's a difficult issue to get past. If the Commission takes any action to authorize it now they will have to deal with it in the future. That is why he is hesitant to take action now. **Chris Smith** clarified the discussion by saying procedurally they have an appeal to the management plan. If the Commission grants the appeal, then the direction provided to the department is to go back and determine how to manage commercial transport to the island and bring a proposal back to the Commission at a future date. In the interim the department would continue to apply prosecutorial discretion with respect to Mr. Myers and anyone else. His use would not be authorized, it would not be recognized, nor would it be recorded and documented, thereby establishing some sort of precedent. It would still be illegal but the department would take no action to prosecute against this unauthorized use or anyone else's unauthorized use.

ACTION: *Walker moved to deny action on Mr. Myers' appeal. He further moved to direct the department to delete prohibition of commercial transportation to Wild Horse Island and to reconsider the Wild Horse Island management plan in 2002. Murphy seconded.*

Dan Vincent, Region 1 Supervisor, asked for clarification if the department was directed to reconsider the entire plan or just that portion regarding commercial access? **Walker** said the entire plan, and asked that the management planning process begin in 2002 and be finalized by March of 2003.

CONTINUATION OF ACTION: *Motion passed unanimously.*

13. Deer, Elk and Antelope Quotas - Tentative.

DEER

Jeff Herbert, Research and Technical Services Supervisor, gave a brief synopsis summarizing conditions after the spring surveys. He will highlight only the changes they are recommending in his presentation today.

Deer, Region 1: No proposed changes to the tentative quotas.

ACTION: *Murphy moved approval of the recommended tentative quotas without change from last year for Region 1 deer; Lane seconded. Motion passed.*

Deer, Region 2: No proposed changes to the tentative quotas.

ACTION: *Murphy moved approval of the recommended tentative quotas without change from last year for Region 2 deer; Lane seconded. Motion passed.*

Deer, Region 3:

HD 311-02 increase B licenses for antlerless mule deer from 200 to 300

HD 318-00 increase B licenses for antlerless mule deer from 50 to 150

HD 320-01 increase B licenses for antlerless mule deer from 50 to 100

HD 320-02 increase B licenses for antlerless whitetail from 75 to 150

HD 325-00 increase B licenses for antlerless mule deer from 100 to 200
HD 325-01 increase B licenses for antlerless whitetail from 75 to 150
HD 333-01 increase B licenses for antlerless mule deer from 100 to 200
HD 333-03 increase B licenses for antlerless mule deer from 50 to 200
HD 335-00 increase B licenses for antlerless mule deer from 50 to 150
HD 339-00 increase B licenses for antlerless mule deer from 50 to 150
HD 343-00 increase B licenses for antlerless mule deer from 50 to 150

One change is indicated that was a mistake and clarifying that. In HD 390-00, the chart shows an increase from 35 to 50, but they actually recommend no change here. **Mulligan** asked about HD 380-02 where it shows a 50 in the change column. Herbert said that is a new license. It should be 50, which is no change. **Walker** noted a similar situation in HDs 391 and 392. **Herbert** said there is no change on those.

Last, in HD 393, east side of the Bridger Mountains, recommend decreasing the B licenses for antlerless mule deer from 150 to 50.

ACTION: *Mulligan moved approval of the recommended changes in tentative quotas for Region 3 deer; Murphy seconded. Motion passed.*

Deer, Region 4:

HD 400-00 increase B licenses for antlerless mule deer from 400 to 500
HD 401-00 increase B licenses for antlerless mule deer from 300 to 400
HD 404-00 increase B licenses for antlerless mule deer from 200 to 400
HD 406-00, increase B licenses for antlerless mule deer from 200 to 300
HD 418-00 decrease B licenses for antlerless mule deer from 450 to 250
HD 419-00 decrease B licenses for antlerless mule deer from 250 to 125
HD 432-00 decrease B licenses for antlerless mule deer from 450 to 250
HD 441-00, increase B licenses for antlerless mule deer from 50 to 150
HD 448-00 decrease B licenses for antlerless mule deer from 300 to 200
HD 471-00 increase B licenses for antlerless mule deer from 200 to 300

ACTION: *Lane moved approval of the recommended changes in tentative quotas for Region 4 deer; Dascher seconded. Motion passed.*

Deer, Region 5: No proposed changes to the tentative quotas.

ACTION: *Walker moved approval of the recommended tentative quotas without change from last year for Region 5 deer; Lane seconded. Motion passed.*

Deer, Region 6:

HD 652-40 decrease permits for antlered buck mule deer from 125 to 100
HD 690-00 increase B licenses for antlerless mule deer from 300 to 500

Dascher said in HD 652-00, Timber Creek in McCone County, a landowner contacted her about problems with mule deer depredation. She said she had proposed the 25 doe permits there. Asked about increasing that. Would like to see enough pressure there to move the mule deer back and forth, and someone can get a harvest on some of the does. **Randy Matchett**, C.M. Russell Wildlife Refuge, said they had agreed to the 25, but from the CMR perspective they would not object to increasing it from 25 to 50. They can see how things develop over the summer before the finals.

ACTION: *Dascher moved approval of the recommended changes in tentative quotas for Region 6 deer, which includes amending HD 652-00 from 25 antlerless mule deer to 50; Walker seconded. Motion passed.*

Deer, Region 7: No proposed changes to the tentative quotas.

ACTION: *Walker moved approval of the recommended tentative quotas without change from last year for Region 7 deer; Dascher seconded. Motion passed.*

ELK

Elk, Region 1: No proposed changes to the tentative quotas.

ACTION: *Murphy moved approval of the recommended tentative quotas without change from last year for Region 1 elk; Lane seconded. Motion passed.*

Elk, Region 2:

HD 201-00 increase antlerless elk quota from 125 to 175

HD 283-00 increase antlerless elk quota from 200 to 250

ACTION: *Murphy moved approval of the recommended changes in tentative quotas for Region 2 elk; Lane seconded. Motion passed.*

Elk, Region 3:

HD 319-10 increase quota for brow-tined bull or antlerless elk from 400 to 450

HD 319-70 increase A-7 licenses for antlerless elk from 100 to 150

HD 320-10 decrease quota for brow-tined bull or antlerless elk from 300 to 200

HD 380-20 decrease quota for either sex elk from 150 to 100

Mulligan said in HD 340-70, the regulations should be corrected to show an extension to December 15. Last year's season was through December 15 and the biologist wants very much for that to continue. Said he feels that is correcting an error. **Joel Peterson**, Region 3 Wildlife Manager, said it was a mistake they didn't catch. **Herbert** said for clarification the season there would run from Oct. 27 through Dec. 15. Everything is right there except for the extension.

ACTION: *Mulligan moved to correct the error in HD 340-70 so it shows an extension of the season to December 15; Walker seconded; motion passed.*

Virgil Binkley, Broadwater Rod and Gun Club, said he would recommend increasing the quota in HD 380-20 for either-sex tags from 100 to 150.

Cliff Cox, landowner in HD 380, said he would like to see the permits stay the same as last year. They haven't seen a change in the elk counts and would hate to reduce permits at this point.

Walker said they were at 100 and last fall they discussed bumping it to 150, which the Commission voted on. Now the recommendation is 100, which two persons in the audience have questioned. **Peterson** said their objective in the elk plan is to maintain a certain level of branch antlered bulls and older age bulls. They feel 100 is more in line with that objective. **Mulligan** said his recommendation is to go with the department's proposal now. There will be something from the Elkhorns working group by August and will give the public a chance to provide input to the department recommendation.

ACTION: *Murphy moved to amend the proposed changes for Region 3 elk by increasing the tentative quota in HD 339-20 from 15 either-sex elk to 20; Mulligan seconded. Motion passed.*

ACTION: *Mulligan moved to approve the recommended changes in tentative quotas for Region 3 elk, as amended; Lane seconded. Motion passed.*

Elk, Region 4:

HD 410-20 increase quota for either sex elk from 55 to 75
HD 410-00 increase quota for antlerless elk from 300 to 400
HD 413-00 decrease quota for antlerless elk from 250 to 150
HD 424-00 increase quota for either sex elk from 15 to 50
HD 425-00 increase quota for antlerless elk from 10 to 20
HD 425-01 increase quota for antlerless elk from 10 to 20
HD 441-20, increase quota for either sex elk from 20 to 30
HD 441-00 increase quota for antlerless elk from 100 to 150
HD 442-00 increase quota for either sex elk from 40 to 400
HD 448-00 increase quota for antlerless elk from 250 to 400
HD 450-00 increase quota for antlerless elk from 10 to 30
HD 455-00 decrease quota for antlerless elk from 50 to 5
HD 455-01 decrease quota for antlerless elk from 75 to 5
HD 455-02 decrease quota for antlerless elk from 75 to 5
HD 455-03 decrease quota for antlerless elk from 75 to 5
HD 455-04 decrease quota for antlerless elk from 50 to 5

Commissioner Lane asked Graham Taylor to comment on the recommended increase in HD 442-00. **Graham Taylor**, Region 4 Wildlife Manager, said that is the Sun River country. They made a commitment to the communities along the front on and around the Sun River Game Range. For the last several years they have been less than their winter objective for elk numbers on the game range. With agreement of the communities, when they reached their objectives it

was time to put on the brakes. This is a dramatic change, but it is called for and people in the communities have understood that.

J. Lane asked him to comment on changes in HD 455. **Taylor** said in HD 455 it is the inverse. In part that includes the Beartooth WMA. Elk have not wintered well in the numbers their objectives call for on and around that game range. Short of going to zero, they are dramatically reducing the cow harvest on the Beartooth WMA this year.

ACTION: *Lane moved to approve the recommended changes in tentative quotas for Region 4 elk; **Murphy** seconded. Motion passed.*

Region 5: No proposed changes to the tentative quotas.

ACTION: *Walker moved to approve the recommended tentative quotas without change from last year for Region 5 elk; **Mulligan** seconded. Motion passed.*

Elk, Region 6:

HD 620-00, decrease quota for antlerless elk from 125 to 85
HD 621-20 decrease quota for either sex elk from 50 to 35
HD 621-00 decrease quota for antlerless elk from 240 to 200
HD 622-00 decrease quota for antlerless elk from 100 to 80
HD 622-20 decrease quota for either sex elk from 40 to 30
HD 631-20 increase quota for either sex elk from 25 to 30
HD 631-00 decrease quota for antlerless elk from 65 to 55
HD 632-20 increase quota for either sex elk from 10 to 15
HD 632-00 decrease quota for antlerless elk from 40 to 30

Herbert pointed out that both HD 620 and HD 630 series involve the CMR and adjacent areas. Discussions have occurred between regional folks and the CMR in terms of concurring with these recommendations. **Dascher** said that brings it more into line with what the Missouri Breaks Elk Working Group had agreed upon.

ACTION: *Dascher moved to approve the recommended changes in tentative quotas for Region 6 elk; **Murphy** seconded. Motion passed.*

Hagener asked about HD 690-21. There was a typo issue before and, again, that should be HD 680 where those are valid. **Herbert** agreed this was an error and would be corrected.

Elk, Region 7: No proposed changes to the tentative quotas.

ACTION: *Walker moved approval of the recommended tentative quotas without change from last year for Region 7 elk; **Dascher** seconded. Motion passed.*

ANTELOPE

Jeff Herbert said the only change recommended for antelope is in Region 3. **Joel Peterson** said their change is HD 339-00. There has been a major land ownership change there with resultant change in access. Only one landowner in that area allows hunting now; the new owner will not allow hunting. Consequently, they are requesting a decrease in permits for HD 339-00 from 150 to 100. In the future they hope to get access on the other properties as that antelope population will grow significantly without some access.

***ACTION:** Mulligan moved approval of the tentative antelope quotas as proposed by the department, which includes the amendment to decrease the quota in HD 339-00 from 150 to 100 either-sex permits; Walker seconded. Motion passed.*

14. Furbearer Seasons & Quotas - Tentative. **Jeff Herbert** pointed out the recommended changes from last year in tentative furbearer seasons and quotas. Those changes come under reporting/pelt tagging, harvest data reporting, fisher limits, bobcats, lynx - closed season, swift fox, tribal lands in the "General Trapping Regulations," date change under "Special Regulations" in WMAs, and using the ALS number instead of conservation number.

John Hughes, landowner in eastern and central Montana, said beaver are becoming an enormous problem in eastern Montana. Prices are down, they are multiplying, they haven't had a lot of water, they are bunched up and there is a lot of damage. Wants the Commission to consider opening the beaver season on October 15 and consider the hunting of beaver.

Bob Sheppard, Ovando, proposed putting in a quota system for otters like they do for bobcats, and removing the per trapper limit or possibly raising the per trapper limit with a quota. That way they would manage the otters and not the trapper. Quotas can be changed from year to year whereas the trapper limit cannot be.

Melissa Tuemmler, Townsend, believes implementing a quota on otter is the best way of managing the species. They recommend increasing the per trapper limit in Regions 1, 2, and 3 to 3 otters, and a 2-otter limit per trapper on the Missouri River of Region 4 for the next 2 years. It would be somewhat of an interim measure until they establish a quota. When they set out a beaver line, people sometimes catch otter even though they don't purposely try to catch them. Otters tend to run beaver out of a beaver dam and then take it over. The otter has ended up being a pest and they need to address that.

John Hughes said if they go with 2 otter in Region 4, they should include the Yellowstone because there are a lot of otter on the Yellowstone.

Edward Hebbe, III, Deer Lodge, said he wanted to talk about otter and the 5-day tagging. On Saturday, December 22, 2001 he caught an otter. He called the warden and didn't get an answer. On Monday, he called again with no answer. On Wednesday he reached the biologist who couldn't tag it. Called the Region 2 office and was told by a lady there it was his duty to get that pelt tagged within 5 days. Has no problem with calling it in. This has happened to him before. Same thing on bobcats. One person will tell him that Enforcement wants it this way. Another

person tells him it's because of the CITES treaties. Would like straightforward answer and see the time for reporting increased.

It should also be noted in several places in the regulations (because they have gone to the ALS system) where in the past they referred to having the conservation number on a trap tag, they now must have the ALS number.

Mulligan asked the department to respond to questions raised by the trappers, particularly on beaver. They are not interested in changing the otter, although that was referenced to total numbers for the trapper vs. a quota system. **Walker** said he senses some inflexibility on the five-day reporting rule and questions how to get around that. Those people living in small communities should not have to chase all over the state to get an animal tagged.

Mark Earnhardt, Law Enforcement Program Manager, said that as far as 5 days vs. 10 days, 5 days makes a big difference if they need to return to the trapping site to investigate a situation and preserve evidence, especially that time of year. For that reason they prefer 5 days instead of 10 and that's their secondary consideration. Their primary consideration is trying to make reporting times similar with lions and bobcats. If they made them similar, they prefer 5 days.

Giddings said there are two parts. One is the 24-hour reporting where a call is required either to the regional office or to the number in Helena. The second part is the pelt tagging which is the discussion point about five days. There is already a provision that trappers or hunters unable to comply with the tagging requirement due to special or unique circumstances must register their harvest by making arrangements for tagging at the proper regional office or contacting field personnel. They could reword that to make it clearer if they can't get hold of a warden they can call the regional office and tell them they are trying to get a pelt tagged within 5 days but can't seem to do it. The office should be able to tell the hunter or trapper they have permission to wait until a warden returns to the field office. The original intent of this provision was to do that. **Mulligan** said in addition to the rewording there needs to be some protocol established at the regional office on how they respond. **Giddings** said they would take care of that by rewording it to make it clearer and making sure their people are aware of it. This is a pelt tagging issue. It is physically handling the pelt and providing a tag on the pelt. **Walker** said they want to make it so when a trapper can't make local contact, there is assurance he is in the clear on this. **Giddings** said he thought they could do that through the regional offices by having someone available who understands the protocol.

Giddings went on to respond to beaver questions. With beaver pelt prices depressed, harvest has been down and there are more beaver out there causing damage. The issue is primarily damage. As far as changing or extending seasons, the beaver is unique in that it can be taken year around. Even though the Commission approves an actual season, if they are causing damage, from April 16 to the end of October landowners can get damage permits to shoot or otherwise take beaver. A way to take beaver in October or shoot them in spring is already in place. As far as a spring hunting season, by law under statute you cannot hunt beaver. They are a furbearer that can only be trapped, unless specifically stated otherwise. The only furbearers that can be hunted are bobcat, lynx and wolverine. It might address some of the issue here if people were made more

aware there is a year around opportunity to take beaver, and work with landowners having damage problems to get a permit to take care of them.

Walker he understands it takes legislation to make beaver eligible for hunting. Suggested the department work on looking to legislation to make a change on hunting beaver.

John Hughes said he has run into problems getting a damage permit. A landowner has called him, and when he calls the biologist he refuses to give him a permit. Hopes the Commission will direct the department to loosen their guidelines when a trapper calls and says a landowner wants a permit. If they don't believe the trapper, call the landowner and give them the permit.

Walker said what they're hearing is beaver is getting to be less a furbearer and more a pest. The department needs to be more responsive to that. **Melissa Tuemmler** said she would recommend changing the status of beaver from furbearer to nongame wildlife, which would require legislative action. Nongame are defined as animals having fur value but there are no seasons or limitations. **Walker** said for beaver they expect to see the department look at a hunting season and the nongame species classification.

Giddings said the incidental harvest of otter goes with beaver trapping. The two proposals were to increase the otter limit and to go to a quota on otter. The department has not recommended changes as overharvest is a concern. A quota would allow them to make adjustments based on population trends over time, allows a trapper to take multiple animals and allows them to keep the harvest at a certain level. **Walker** suggested setting the quota at 110% of the last 5-year average.

Herbert suggested proposing a quota as a tentative with whatever protocol is associated with that, take comment and then look at that potential quota using it for discussion at the August meeting when they finalize this. **Mulligan** mentioned a "housekeeping" item. Jefferson County is shown in District 3 and District 4. Suggest scratching it out of District 4.

John Hughes said bobcats are thriving and rabbits in the surrounding areas are thick. Would like to see a few more cats and recommends 100 more in Region 4 and 150 in Region 5.

Mable Deane, Montana State Houndsmen Assoc., said under the chase-only season for bobcats, there is a change for trapping districts 4, 5, 6 and 7 where the chase season is being changed from March 2 to April 14. What is the reason?

Giddings said that was from a mistake made two years ago. The chase-only season is after the trapping season is over. The trapping season dates were changed two years ago to March 1 in districts 4, 5, 6 and 7. That is a correction from two years ago when it should have been made the first time.

Wayne Moore, Montana Trappers Assoc., said in regard to the bobcat quota, Sweetgrass County where he traps is probably the biggest bobcat refuge in the state. People from out of state are buying land in the county, and most don't allow hunting, fishing or trapping. The quota for

Region 5 should go to 350 or 400. Chances of getting many cats in Sweetgrass County before the Region 5 quota is filled are pretty slim.

ACTION: *Walker moved to approve the recommendation to increase the bobcat quota in District 5 to 300; Mulligan seconded. Motion passed.*

Graham Taylor said there was some room to increase the Region 4 bobcat quota, but the addition of 100 bobcats is too severe. Could easily recommend adding 25.

ACTION: *Lane moved to approve the recommendation to increase the bobcat quota in District 4 from 175 to 200; Mulligan seconded. Motion passed.*

Walker asked if they were going to look at the 5 and 10 day reporting times. **Herbert** said his understanding was they were going to deal with the issue of reporting. Didn't hear a recommendation to change the regulations. **Walker** said on beaver they will be dealing with two different pieces of legislation. One is to create a hunting season for beaver and the second one to take beaver off the furbearer list. **Herbert** asked if they would be requesting public comment on two legislative proposals, one to authorize spring shooting of beaver and the other to reclassify them, or is the Commission requesting the department to assemble those proposals as part of a legislative package? **Walker** said he was requesting the latter – to assemble as part of a legislative package. **Hagener** said everyone should be aware they have to submit everything by July 2. They have submitted the list they already have to the budget office. They are talking about whittling out part he has already submitted. Will probably be a quota on amount of legislation he can submit. **Walker** said they could talk to these people to find their own legislator to do a bill. Otherwise, another two years has gone by. **Hagener** said he has no problem preparing it, but he may not be able to get it through the budget office for the department to propose that legislation.

Giddings said he expects they will have something before it goes out as a tentative so people understand what is being proposed in the finals rather than wait until the finals meeting. There is a change going from what they currently have to proposing a quota, and when they propose a quota they base it on the figure Chairman Walker suggested of 110% of the past 5 years. The important part of this is to also have district quotas, similar to bobcat. In other words, allocate a percentage of that total to the different trapping districts that represent the majority of the harvest. It is an allocation question so people in districts with the highest otter population can take advantage of that.

ACTION: *Walker moved that the otter quotas be set at 110% of the average of the last five years, by trapping district; Dascher seconded. Motion passed.*

Murphy asked about "LYNX - CLOSED SEASON" of the changes where it says, "Accidentally trapped and released lynx (uninjured) must be reported to a designated Fish, Wildlife & Parks employee within five (5) days of release." It goes on to say, "Trappers that accidentally capture a lynx that cannot be released uninjured must immediately notify a designated Fish, Wildlife & Parks employee for assistance to determine disposition and/or collection of the animal." Does

that mean if the lynx is still alive he cannot kill that cat before he finds a department employee? **Giddings** said that was correct. **Murphy** said the same issue could develop if he can't find a warden or someone else out there, that cat could suffer for who knows how long. **Giddings** said that is true. CITES, which issues bobcat tags, has made determinations in terms of accidental capture of lynx. With the lynx being an ESA threatened species, they are setting up a record keeping system to take the lead in determining if a lynx needs to be killed. Often a lynx in a trap is not severely injured and can be released. If someone from the department is there they can make that determination and remove responsibility from the trapper. Most lynx are taken in Districts 1, 2 and 3 and there are more people available to take care of the animal in those districts than others.

Hughes said there are two things to note. One is a clarification and one is a possible change. Under "Pelt Possession," what is meant by "documentation of lawful acquisition"? **Giddings** said a bill of sale is an example. **Hughes** said he buys otter from Texas that are not tagged and sees a problem if they inspect his fur shed. **Giddings** said a bill of sale would do it.

Hughes said the other thing is on snares. It says, "Snares are required to be equipped with a breakaway lock device designed to release when 200-350 ft/lbs of force is applied." Suggest changing that to "Snares are required to be equipped with a breakaway lock device designed to release up to 350 ft/lbs of force." A lot of trappers are using 180 ft/lb breakaways now as they release more deer than a 200 or 225. Also, in the last part of that, why is a breakaway device needed under water? **Giddings** said based on recommendations from the trapping advisory committee, the Commission put in the underwater snares statement two years ago. It was delayed so people would have time to equip their land snares first and water snares later. The primary reason for underwater snares being included was for moose as moose have been caught when they were feeding under water.

***ACTION:** Walker moved that snares are required to be equipped with a breakaway lock device designed to release up to 350 ft/lbs of force; Dascher seconded. Motion passed.*

***ACTION:** Dascher moved to accept the department's recommendations on furbearer regulations, as amended and including the deletion of a swift fox season; Lane seconded. Motion passed.*

15. Moose, Sheep & Goat Quotas - Final.

MOOSE

Jeff Herbert said no changes are recommended from the tentative quotas for moose.

***ACTION:** Mulligan moved approval of the final statewide moose quotas proposed by the department; Dascher seconded. Motion passed.*

SHEEP

Jeff Herbert said there is one proposed change for sheep that was not in the tentatives. In HD 124-00 they recommended as a tentative 6 either sex sheep. After visiting with some local FNAWS members, consultation with tribal members and looking at the data they have, they recommend increasing to 7 either-sex permits.

ACTION: *Murphy moved to amend the quota for HD 124-00 to 7 either-sex sheep permits; Lane seconded. Motion passed.*

ACTION: *Dascher moved approval of the final quotas on sheep proposed by the department, as amended; Murphy seconded. Motion passed.*

GOATS

Jeff Herbert said no changes are recommended from the tentative quotas for goats.

ACTION: *Murphy moved approval of the final quotas on goats proposed by the department; Dascher seconded. Motion passed.*

16. Mountain Lion Season & Quotas - Final. **Jeff Herbert** went over the department recommendations on changes to the mountain lion season and quotas

Jim Lechleitner, Missoula, commented on the lion quota for HDs 202 and 203 west of Missoula. When comparing HD 100 to HD 202, last year in HD 100 they had the same quota and they took 14 lions in four days. In HD 202 there was a 13-cat quota and it took over 3 months to fill it. The recommendation this year for HD 100 is to drop the quota by 5. In HDs 202 and 203, the recommendation is to drop it by 2. **Walker** said his understanding of the topography and a bit of “race mentality” in Region 1 causes that to be done quickly. **Lechleitner** said the nonresidents now go to HDs 202 and 203. The nonresident hunter success rate went from about 25% to 50% in one year. HDs 202 and 203 get hunted more heavily than HD 100. As chairman of the board of directors for the Montana State Houndsmen’s Assoc. he takes phone calls from all the houndsmen around the state, and 90% of the calls this year since the tentative quotas went out have been about HDs 202 and 203. Everyone who has called thinks the proper quota should be 3 males, 3 females, or 5 males, no females.

John Firebaugh, Region 2 Wildlife Manager, said HDs 202 and 203 have been productive lion areas. They have had a total quota as high as 30. In the past several years they have reduced them fairly regularly. Last year they had a total of 13 and they reduced it to 11 this year. Part of this information is based on houndsmen surveys showing the average number of lions treed by hound handlers in the region. That area was the highest in Region 2. It also has some of the lower number of days for lion observation. Felt they could sustain a higher harvest there. Whitetail deer population is responding fairly well since the winter of 1996-97. He said they are satisfied with the female quota.

ACTION: *Dascher moved to accept the department recommendation on final mountain lion season and quotas, as amended. Murphy seconded. Motion passed.*

Meeting adjourned at 7:00 p.m.

Wednesday, June 19, 2002

Chairman Dan Walker opened meeting at 8:10 a.m.

17. Blackleaf WMA Lease, Region 4 - Final. **Steve Knapp**, Habitat Bureau Chief, said this is a 10,000 acre winter range for deer and elk. They started livestock grazing on the Blackleaf about 1990 and decided to use cows to get rid of old growth and stimulate the grass. The department is pleased with how it is working and so is the lessee. The rental rate for this season will be \$12/AUM and they are asking for a four-year lease renewal. Our AUM rate will be going to the statewide average. It comes from the Montana Agricultural Statistics Service and this year it is \$14.90. It is a standard rate they use and this one will reach that in 2004. Next year it starts going up.

ACTION: *John Lane moved to approve the Blackleaf WMA lease agreement for four years; Dascher seconded. Motion passed.*

18. Elk Island WMA Lease, Region 7 - Final. **Knapp** said this lease, which is in Region 7, is on the Yellowstone River at Savage between Glendive and Sidney. It's about 1,200 acres, half fee, half lease. Talking about a portion of that area today. Have had a sharecropping agreement there for many years and there is a new sharecropper this year. The new lease involves hay and wheat activities, which have gone on for many years. Habitat is provided for pheasants and whitetail deer. The department is asking the Commission to approve a one-year lease. The reason for one year is because it is a new sharecropper. **Dascher** asked what the sharecropper gets as payment. **Knapp** said there is no cash involved; FWP receives 1/4th of the wheat crop, and 1/3rd of the hay crop, both of which are left standing. The sharecropper gets the rest. **Hagener** asked if this was done on a rotational basis. **Knapp** said that was correct.

ACTION: *Dascher moved approval of the Elk Island WMA lease; Lane seconded. Motion passed.*

Walker asked about a letter from Pheasants Forever regarding when haying was done by the previous sharecropper on the Elk Island WMA. **Knapp** said on this lease only one field of eight acres is hayed before July 15. The sharecropper wants to cut early to get something worthwhile from the acreage. There is also the requirement to control weeds by cutting early. This is the compromise the department has come up with and it's a good one. It doesn't compromise pheasant production. **Hagener** said it appeared Pheasants Forever didn't completely understand the overall lease arrangement. When it was explained that a small percentage is hayed before that time and with the rotational pattern they have, the Pheasants Forever folks were okay with it.

19. Prairie Dog Translocation, CMR Refuge - Final. **Randy Matchett**, biologist on C. M. Russell National Wildlife Refuge, said that a month ago he mailed a draft proposal describing what they wanted to do. In southern Phillips County is Montana's blackfooted ferret recovery area. From 1992-1996 plague impacted that area pretty hard reducing prairie dogs by about 80%. CMR lost about half of their prairie dogs in Phillips County. In 1997 they started a translocation program on CMR putting in small pockets of dogs with the idea of getting seed colonies started to fill in what they previously occupied. This proposal is to continue that. There are 15 sites where they want to re-establish prairie dogs. Also want to build more acres with prairie dogs in one area to support a small blackfooted ferret population. **Dascher** asked if where they want to put them is interior to CMR. **Matchett** said they are all very much in the interior reaches of CMR. **Hagener** asked where the prairie dogs were coming from. **Matchett** said he has come to the Commission to get authorization to take prairie dogs from outside CMR and put them at CMR. They have trapped prairie dogs for a number of years, mostly on private land in Phillips County. They are quarantined for two weeks. They want to be flexible on where prairie dogs come from to avoid areas where plague is active. **Dascher** asked if there was a way they could get BLM to agree to translocate dogs off BLM land. **Matchett** said BLM has been reluctant to give them permission because they are below their target levels. What they try to avoid is taking prairie dogs from where they are being actively developed for ferrets.

Dascher asked for a copy of the tentative prairie dog relocation plan, which Harold Wentland provided. **Matchett** said this is a programmatic guidance document developed by the prairie dog working group. He was hoping the department would present that programmatic guide to the Commission for approval. The timeline didn't work out. Wanted to start again this year and that is why he is bringing it up now. The proposal he wrote for CMR directly follows the guidance in that document. Once the Commission approves whatever changes are in the programmatic guidance document, the CMR translocation program would fall under those guidelines. **Herbert** said an important point in the proposal is that they are requesting Commission approval in advance of the adoption of that. Once that is adopted, this folds into it. The process Randy Matchett is describing is essentially what they would go through if that programmatic guide was adopted. **Dascher** asked if once the plan is in place, will it only take the regional supervisor's approval? **Herbert** said "Correct." **Matchett** said it will be delegated down to each regional office customized to each region's needs and goals. **Dascher** said though CMR is asking for three years, she is hesitant until this plan is finished. **Matchett** said their intent in asking for three years is they anticipate it will take that long to catch that many prairie dogs and get the job done. Didn't want to bother the Commission every year with it. Would certainly go along with making it contingent on the approval of that document and then they fold into that. **Dascher** said this is the first time she has seen the plan and wants a chance to study it more. Would feel more comfortable doing it for 2002 and then go back for subsequent years. When it is all finished, will go back over it. **Hagener** suggested going through Commissioner Dascher when they talk about approval from the regional supervisor. By doing it that way it would not have to come back before the full Commission.

Walker said he agreed with **Commissioner Dascher** that it should be for one year. Several agencies are involved and often some are not present so they don't know what's being done nor what their policy is exactly. **Matchett** said he would take a note back to the prairie dog working

group to make that modification of approval by the commissioner from that region. **Herbert** suggested someone in the Malta community putting together a list of private landowners who allow prairie dog shooting.

***ACTION: Dascher** moved to approve translocation if up to 1,500 prairie dogs to the Charles M. Russell National Wildlife Refuge for one year until the programmatic guidance plan is completed. After the plan is completed, it would require approval by the Regional Supervisor and the Commissioner from that area. **Walker** seconded the motion.*

Herbert brought up an additional minor item that when Randy Matchett and his crew are selecting donor sites (the private landowners) the information be passed through the regional office for at least their concurrence or knowledge of who was providing prairie dogs in a given year. **Matchett** said they would do that.

CONTINUATION OF ACTION: Motion passed.

Dascher asked Randy Matchett to be sure she gets a copy of the final guidance plan.

20. Moose and Sheep Auction Rules - Final. **Herbert** said they received no comments on the draft rules so submit those same rules for final approval by the Commission.

***ACTION: Mulligan** moved approval of the bighorn sheep and moose auction license rules as written; **Dascher** seconded.*

Hagener said last year when one of the submittals came in, there was some question if they understood all the rules and submitted all the information. Was anything changed this year? Boone and Crockett had applied for one of them but there was some question if they had put in all the background information that was required. **Mulligan** said there was no intent to change the rule. It was a lack of understanding by Boone and Crockett that they needed to give the Commission some insight of their ability.

Bill Holdorf, Skyline Sportsmen's Assoc., Butte, said he wants to apply again for the moose permit but doesn't understand what they were just talking about where it seems it is all set up. Butte had it a few years ago and he understood it was to be rotated. **Mulligan** said what they are dealing with here is the format of the rules to do the actual selection and auction. One of the things they talked about last time was the concept of rotating it. There is some difficulty choosing one site over another. There was no commitment to do that. Discussion about Boone and Crockett doesn't mean they have been selected because no one has been selected.

CONTINUATION OF ACTION: Motion passed.

21. Early Season Migratory Bird Regulations - Tentative. **Jeff Herbert** said typically they divide migratory bird rule-making into early and late season. For the early season they are talking about mourning doves, common snipe and sandhill cranes in Montana. The framework dates, which are the season dates and the bag limits for doves and snipe, are the same and merely

change in terms of the calendar year. The sandhill crane seasons will require action by the Commission in terms of date changes, which are just calendar progression, for Pacific and Central flyway seasons. More important, there are some adjustments in quotas for sandhill cranes. Those birds are managed on the basis of a quota established for the flyway and FWP receives an allocation from that quota.

Season dates in the Pacific flyways are September 7 and 8, and September 14 and 15, 2002. The overall quota is reduced in Montana this year with the regions making adjustments in number of permits:

- Madison and Beaverhead unit, 50

- Deer Lodge, 25

- Powell County, 35

- Wheatland-Sweetgrass area (Central Flyway), 50

The other change is changing the deadline for submitting a permit application from July 10 to August 1.

Mulligan asked how the areas came about. **Herbert** said FWP established them. When they began implementing seasons, FWP proposed an area by using population trend information from surveys that were conducted. When flying surveys for these birds, it is most appropriately done in early September when they stage and before they begin to migrate. They ran check stations, which was one of the prerequisites for establishing a season for two to three years. Initially they had the Madison-Beaverhead County area and the Warm Springs area. After some time, they brought in the Helmville area and then expanded it to include the Central Flyway part of the state. They had to adjust some quotas because birds taken in Wheatland and Sweetgrass areas were the bigger cranes. Others have expressed interest in potential seasons (Ennis-Cameron area was one). Unless they pull permits away from other areas, they don't have the latitude to create new hunting units.

Mulligan said he is concerned when there are areas where access is a problem and in others there are a lot of cranes. Perhaps should look at new areas. **Herbert** said what they're doing this year is accommodating the reduction they've had to absorb. **Mulligan** said if they didn't have a reduction, would there have been enough birds in other areas to shift out of the area where Region 3 expressed a concern last year? **Herbert** said they do in some areas. They have to go through the process of taking that to the Pacific Flyway. They'd have to designate a hunt unit and probably have to live by the check station requirement for the first two to three years. Some work goes along with doing that. Want to make sure they had land that was open. Just about all the permits except for the Warm Springs hunt are on private land and there have been no problems gaining access. For the first four or five years in the Dillon area they had no problems whatsoever. However, a couple of the large, more popular areas to hunt in the Dillon country were taken out. **Mulligan** said he wanted the department to pursue other options, though not as part of approving this. It is time to look at other areas to establish so they can shift permits out of areas where access is a problem. **Herbert** said a way to approach that is if they are consistently under-subscribed, which typically they are not, they want a minimum of 25-30 permits to make it worthwhile. **Mulligan** said if those with permits are consistently not getting permission to hunt,

which appears to be happening in the Twin Bridges-Dillon area, that says the department should be looking at doing something different.

ACTION: *Mulligan moved approval of the tentative early season migratory bird regulations; Dascher seconded. Motion passed.*

Mulligan asked the department to look at having bonus points on swans.

22. Fall Turkey Quotas - Tentative. **Jeff Herbert** said there are two changes to the tentatives. Had a late request from Region 1 and they want to increase fall turkey either-sex permits in Lincoln County from 40 to 80. The second change is to increase the total fall turkey tags in Region 3 from 10 to 20. Those would be valid for all of Region 3 except the Canyon Ferry WMA, which is the site of recent transplants. **Mulligan** said there are a couple of other areas in Region 3 that will be closed because of recent transplants. The release site by Silver Star will be closed and the Golden Sunlight Mine property is still closed. **Herbert** said another change is the deadline to apply for permits is August 1 instead of July 1.

ACTION: *Dascher moved to approve the department's recommendations for tentative fall turkey quotas with the August 1 deadline to apply for permits; Mulligan seconded. Motion passed.*

23. Bice Conservation Easement Water Issue, Region 7 - Final. **Debby Dils**, Lands Section Supervisor, said on March 21, 2002 the Commission approved the Hirsch/Bice conservation easement, which included a provision that the project could not be finalized until DNRC approved a change in point of diversion for irrigation water. On May 20, 2002 the department presented both easement proposals to the Board of Land Commissioners as required by the FWP statutes. The Land Board at that meeting unanimously approved the easements. Since that time the department has looked at water rights issues and removed the contingency for three reasons. The Bice Ranch has DNRC water rights as well as contract water from the Tongue River Water Users Assoc. Bice has the right to use contract water from the Tongue River Water Users Assoc. without having any points of diversion approved. The third reason is the department has changed the language in the easement to further protect those water rights, both the DNRC water rights and the contract water rights.

Walker asked about the language change to the easement and if the Land Board needs to approve it. **Dils** said "No." She said the Land Board was informed of what the issue was when Paul Sihler presented it. Paul brought that up to let them know what your concerns were. This should solve the problem of the department having a tighter control on any release of the water rights. **Walker** said that solves the problem, but from a binding of that property for future use of the water, is that something they can do? What is the force of this new language legally? **Engstrom** said what this does is require the landowner to get prior written approval if they change their interests in water. That includes the contract water. The department is not binding it. It gives FWP the ability to comment and helps with mitigating some concerns for the wetlands on the property. It might affect conservation easement values on the property. It doesn't bind the water rights. **Walker** asked if sometime in the future the landowner could sell

that interest. **Engstrom** said the landowners are required to retain their interests in any and all water rights they have now. They cannot transfer, encumber, sell, lease or otherwise separate such rights from the land, or allow them to be lost by non-use or any other reason without prior written approval. That gives the department the right to comment, to give prior written approval, but doesn't necessarily keep them from transferring, encumbering, selling or separating them from the land. The only portion that was changed and not approved by the Commission and by the Land Board was the "prior written approval" portion of this section. The only portion being added is to get "prior written approval." Otherwise, the department would have had no right to look at the water rights and insure our conservation easement values weren't being affected if they would transfer, sell or separate from the property. Another section has been inserted to be sure their contract water was included in their interests for water rights. They are in agreement with this change.

ACTION: *Walker moved to accept the department recommendation that the contingency language "upon the points of diversion being acquired" be dropped from the original motion approving the Hirsch/Bice easement; Lane seconded. Motion passed.*

24. Proposed ARM Rule on Bonus Points. **Nancy Kraft**, License Bureau Chief, said she believes the proposal of Bill Holdorf, Skyline Sportsmen, is to add swan licenses to the bonus point system. The current bonus point system was put together with the intent of doing it in stages. They presently have moose, sheep and goat. The primary goal was to do the high volume species first and the swan is a species that could fall into that bonus point system. Their preference is to do it after the second phase of the bonus point, which is adding deer, elk and antelope, and then gradually incorporating some of those smaller volume drawings into the bonus points system. It shouldn't require legislative action as it falls under the current ARM rules that are established for bonus points. Recommendation is to look into this and phase it in after deer, elk and antelope. **Mulligan** asked when deer, elk and antelope are scheduled. **Kraft** said next year, 2003.

Bill Holdorf, Skyline Sportsmen's Assoc. - His understanding of the deer, elk and antelope is if you miss a year, you get an extra point to draw. His proposal is if you draw a swan permit one year, you would not be eligible to draw next year but the following year you would again. Therefore, you would have 1,000 people every two years with a chance to hunt swans in the Pacific Flyway. In the year 2000, 1,447 people drew permits and in 2001 there were 1,328 who drew. So there are plenty of people if those are rotated. If there was a permit system like goat and sheep if you hadn't drawn for three years, you'd have your name in three or four times. **Mulligan** said they would have to go to the legislature to do what Holdorf is requesting but can make it part of the bonus system without legislature. **Kraft** said the bonus point system is not a guarantee. It merely gives the hunter extra chances in the drawing to obtain a permit. It does not guarantee a permit every other or every third year. **Holdorf** said he would definitely like to see something done and asked if it could be done this year. Could the department work up a program and present it? **Mulligan** said they have agreed to have it in place in 2003 when the deer, elk and antelope come up for the bonus system. The other option is for Skyline Sportsmen or some group that wants this to go to the legislature. The department has a long list of bills that the legislature wants cut back, so doesn't think the department can add another one. Skyline

could certainly go to the legislature and ask them to do this. **Holdorf** said he would like to see a system where people who don't draw have a better chance. **Walker** said they will do swans this coming cycle and that brings it ahead at least two years. **Hagener** said he hears regularly how complicated the system is. Consistency will help a lot. **Walker** agreed they need to work on consistency all the way through.

Kraft said the other proposal is about department flexibility in restoring bonus points and also waive the seven-year wait for individuals who were successful in drawings but subsequently affected by extenuating circumstances such as the September 11 incident, military orders to Afghanistan, etc. A third issue is to allow FWP to reissue licenses that are returned in those circumstances. Bob Lane has recommended an Administrative Rule be drafted to allow the department to address this. Have included wording to make it very specific what group of people they are talking about: a member of the Armed Forces who is either deployed to a combat zone, deployed in support of a peacekeeping mission or deployed in response to a state or national emergency, or the applicant is affected by a catastrophic or major natural disaster or man-made event that requires the applicant's assistance as a member of a local, state or federal management agency.

People in that category with this amendment to the rule would be able to restore their bonus points if they drew a moose, sheep and goat permit. Then there is a new rule that actually nulls and voids a moose, sheep or goat permit for people in those circumstances and eliminates the seven-year wait for those who may draw a permit. Any permits returned because of those circumstances will be able to be reissued by the department if they are done in a timely manner prior to the season opening. This is the initial step to put it out for public comment and go through the process an ARM has to go through. If you elect to adopt it, final adoption will be at the September 11 Commission meeting.

Dascher asked about family members in other situations such as those at the World Trade Center in New York City who shouldn't be penalized. This is limited to people in the military. **Kraft** said they received very few inquiries from people on these points and all were from people who fell into this category. They were trying to limit it somewhat and still allow some flexibility. **Hagener** said everyone agreed they needed to make it very clear in the rules and they felt it was appropriate to do it this way. **Walker** asked when this would go out. **Kraft** said the notice goes to the Legal Division today. Comments must be received by August 12, and the Commission would act on it in September.

ACTION: ***Mulligan** moved to adopt the proposed rules for giving Montana Fish, Wildlife & Parks the authority to restore bonus points and eliminate the seven-year wait to those individuals meeting the criteria outlined in the rules; **Dascher** seconded. **Motion passed.***

Meeting adjourned at 9:30 a.m.

Approved this 8th day of August, 2002

Dan L. Walker, Chairman

M. Jeff Hagener, Director